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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,430	04/15/2004	Roger L. Stolle	1899US01	9854
43896	7590	02/25/2008		
ECOLAB INC. MAIL STOP ESC-F7, 655 LONE OAK DRIVE EAGAN, MN 55121			EXAMINER OGDEN JR, NICHOLUS	
			ART UNIT	PAPER NUMBER
			1796	
			MAIL DATE	DELIVERY MODE
			02/25/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/826,430

**Applicant(s)**

STOLTE ET AL.

**Examiner**

Necholus Ogden

**Art Unit**

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12-21-2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-69 is/are pending in the application.
- 4a) Of the above claim(s) 38-69 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12-21-2007 has been entered.

### ***Response to Amendment***

1. Claims 1-9, 11, 13, 15-17, 21, 22, 27-37 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Van den Brom et al (5,719,111).
2. Van den Brom et al disclose a solid detergent block comprising 0.1 to 10% by weight of a non-phosphate building agent such as MGDA an alkali metal silicate (col. 4, lines 1-20); less than 5.0% by weight of water; 5-80% by weight of an alkaline agent; 0.5 to 5.0% by weight of a surfactant and 0 to 20% by weight of a bleaching agent (col. 2, lines 20-55). Note, see examples and claims

As this reference teaches all of the instantly required it is considered anticipatory.

In the alternative, if the above listed claims are not considered anticipatory, it would have nonetheless been obvious to one of ordinary skill in the art to combine the components of Van den Brom et al to specifically teach the claimed MGDA solid detergent composition because Van den Brom et al require each of the claimed

components in their requisite proportions, wherein it would have been obvious to combine the components, absent a showing to the contrary.

3. Claims 1-25, and 31 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over European Patent (0882786).

4. EP '786 discloses a powdered detergent composition comprising 0.5 to 30% by weight of MGDA; 0.5 to 18% by weight of a nonionic surfactant; 1 to 30% by weight of an anionic surfactant; and inorganic builders such as crystalline silicate (see abstract). EP '786 further includes other builders such as tripolyphosphates, and silicates (page 7, lines 35-55) .

As this reference teaches all of the instantly required it is considered anticipatory.

In the alternative, if the above listed claims are not considered anticipatory, it would have nonetheless been obvious to one of ordinary skill in the art to combine the components of EP '786 to specifically teach the claimed MGDA solid detergent composition because EP '786 require each of the claimed components in their requisite proportions, wherein it would have been obvious to combine the components, absent a showing to the contrary.

5. Claims 1-37 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Williams (6,162,259).

6. Williams disclose a laundry composition comprising a builder, surfactant and amino tricarboxylic acid such as MGDA. Williams teaches that said surfactant comprises from 0.2 to 30% by weight of an anionic, nonionic, cationic and/or mixtures thereof (col. 2, lines 20-57). With respect to the anionic surfactants, Williams teaches

that said anionic surfactants comprise alkyl sulfonate, sulfate and ethoxy sulfate surfactants (col. 3, lines 42-60). The compositions of Williams further comprise 1-80% by weight of said builders such as tripolyphosphates (col. 5, lines 60-65); and aluminosilicates; and 0.001 to 40% by weight of MGDA (col. 6, lines 34-67). Additional components such as 3-12% by weight of alkalinity components such as alkali metal silicates, 0.005 to 20% by weight of sequestrants and adjunct materials such as water or moisture (col. 22, lines 5-41). Moreover, Williams further teach that said composition may be in any form such as tablets, granular, powders (col. 26, lines 24-26), and wherein said compositions are processed by extrusion and tableted (col. 26, lines 47-58). With respect to claim 32, said tablet or granular compositions may be dispensed from a container (col. 27, line 34-col. 28, line 20). See examples 1-3, 5, 8-9 and claims.

As this reference teaches all of the instantly required it is considered anticipatory.

In the alternative, if the above listed claims are not considered anticipatory, it would have nonetheless been obvious to one of ordinary skill in the art to combine the components of Williams to specifically teach the claimed MGDA solid detergent composition because Williams requires each of the claimed components in their requisite proportions, wherein it would have been obvious to combine the components, absent a showing to the contrary.

### ***Response to Arguments***

7. Applicant's arguments filed 12-21-2007 have been fully considered but they are not persuasive.

Applicant argues that Van den Brom uses MGDA and water as a binding agent and requires multiple compaction or compression to solidify wherein applicant's claim requires solidification from within about 1 minute to about 2 hours without compression.

The examiner respectfully disagrees and reminds applicant that the claims are directed to a composition and not a process of making and the claims are considered a product by process where patentability depends on the product and not the method of its production. Moreover, the burden shifts to applicant to provide evidence that the product is materially different from the claimed invention through its production. Accordingly, applicant has not provided said evidence or criticality and the Examiner asserts that the product would inherently be the same since the compositions are the same and specifically suggested with sufficient specificity by the prior art.

Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983).

When the claim recites using an old composition or structure and the "use" is directed to a result or property of that composition or structure, then the claim is anticipated. *In re May*, 574 F.2d 1082, 1090, 197 USPQ 601, 607 (CCPA 1978).

Applicant argues that nowhere does Van den Brom provide the use of water and MGDA (see col. 2, lines 20-55).

Applicant argues that the use of less than 5% by weight of water in Van den Brom does not constitute admixing with water.

The examiner contends that applicant's claims state "water" in no amounts as a limitation and Van den Brom provides the use of water in low amounts specifically suggests the claimed invention since it reads directly on "water".

Applicant argues that Yamaguchi and Williams do not teach forming a solid in about 1 minute to 2 hours.

The examiner contends that the reasons set forth above for Van den Brom apply herein and are therefore not recited again.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholas Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Necholus Ogden/  
Primary Examiner  
Art Unit 1796

2-19-08